



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective March 2016.

ADOPTED

The Committee has adopted amended instructions for use in cases pertaining to violations of the operating while intoxicated statutes, MCL 257.625 to correct the fourth element in M Crim JI 15.3a, 15.11a, and 15.12a.

M Crim JI 15.3a Operating with Any Amount of Schedule 1 or 2 Controlled Substance

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle. “Operating” means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

History

M Crim JI 15.3a (formerly CJI2d 15.3a) was added in September, 2010, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to provide a scienter element.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

M Crim JI 15.11a Operating with Any Amount of Schedule 1 or 2 Controlled Substance Causing Death

(1) The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his / her] body causing the death of another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [*state date*] in the [county / city] of [*state jurisdiction*]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [*state specific schedule 1 or 2 controlled substance alleged*] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ the victim's death. To "cause" the victim's death, the defendant's operation of the vehicle must have been a factual cause of the death, that is, but for the defendant's operation of the vehicle the death would not have occurred. In addition, operation of the vehicle must have been a proximate cause of death, that is, death or serious injury must have been a direct and natural result of operating the vehicle.

Use Note

This instruction is intended to state the elements of the offense found at MCL 257.625(4), and (8).

¹ If it is claimed that the defendant's operation of the vehicle was not a proximate cause of death because of an intervening, superseding cause, review *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

History

M Crim JI 15.11a (formerly CJI2d 15.11a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013).

M Crim JI 15.12a Operating With Any Amount of Schedule 1 or 2 Controlled Substance Causing Serious Impairment of a Body Function

(1) The defendant is charged with the crime of operating a motor vehicle with any amount of a controlled substance causing serious impairment of a body function to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was operating a motor vehicle on or about [state date] in the [county / city] of [state jurisdiction]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating the vehicle on a highway or other place that was open to the public [or generally accessible to motor vehicles, including any designated parking area].

(4) Third, that while operating the vehicle, the defendant had any amount of [state specific schedule 1 or 2 controlled substance alleged] in [his / her] body.

(5) Fourth, that the defendant voluntarily decided to drive knowing that [he / she] had consumed or used a controlled substance.

(6) Fifth, that the defendant's operation of the vehicle caused¹ a serious impairment of a body function² to [name victim]. To "cause" such injury, the defendant's operation of the vehicle must have been a factual cause of the injury, that is, but for the defendant's operation of the vehicle the injury would not have occurred. In addition, operation of the vehicle must have been a proximate cause of the injury, that is, the injury must have been a direct and natural result of operating the vehicle.

Use Note

¹ If it is claimed that the defendant's operation of the vehicle was not a proximate cause of serious impairment of a body function because of an intervening, superseding cause, review *People v Schaefer*,

473 Mich 418, 438-439, 703 NW2d 774 (2005). *Schaefer* was modified in part on other grounds by *People v Derror*, 475 Mich 316, 715 NW2d 822 (2006), which was overruled in part on other grounds by *People v Feezel*, 486 Mich 184, 783 NW2d 67 (2010).

² The statute, MCL 257.58c, provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

History

M Crim II 15.12a (formerly CJI2d 15.12a) was adopted in September, 2006, amended March, 2016.

After reviewing the unpublished per curiam decision in *People v Wilds*, No. 311644, 2013 Mich App LEXIS 599 (Apr 2, 2013), the committee determined in 2015 that this instruction should be amended to comport with the statutory language.

Reference Guide

Statutes

MCL 257.625, 257.58c.

Case Law

People v Koon, 494 Mich 1, 832 NW2d 724 (2013); *People v Schaefer*, 473 Mich 418, 438-439, 703 NW2d 774 (2005).